



4310-JB

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 8360

[LLCO913000.L16300000.NU0000.16X]

Notice of Proposed Supplementary Rules for Public Lands in Colorado

AGENCY: Bureau of Land Management, Interior.

ACTION: Proposed supplementary rules.

SUMMARY: The Bureau of Land Management (BLM) is proposing supplementary rules to protect natural resources and provide for public health and safety. The proposed supplementary rules would apply to all public lands and BLM facilities in Colorado.

DATES: You should submit your comments by [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: You may submit comments by the following methods: Mail or hand deliver to John Bierk, State Chief Ranger, BLM Colorado State Office, 2850 Youngfield Street, Lakewood, CO 80215. You may also submit comments via e-mail to jbierk@blm.gov (include "Proposed Supplementary Rules" in the subject line).

FOR FURTHER INFORMATION CONTACT: John Bierk, State Chief Ranger (see **ADDRESSES** listed above), or by phone at (303) 239-3893. Persons who use a telecommunications device for the deaf may call the Federal Information Relay Service (FIRS) at (800) 877-8339 to contact the above individual during normal business hours. The FIRS is available 24 hours a day, seven days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION:

I. Public Comment Procedures

Written comments on the proposed supplementary rules should be specific, confined to issues pertinent to the proposed supplementary rules, and explain the reason for any recommended change. Where possible, comments should reference the specific section or paragraph of the proposed supplementary rules that the comments are addressing. The BLM is not obligated to consider or include in the Administrative Record for the final supplementary rules comments delivered to an address other than the one listed above (see **ADDRESSES**) or that the BLM receives after the close of the comment period (see **DATES**), unless they are postmarked or electronically dated before the deadline.

Comments, including names, street addresses, and other contact information of respondents, will be available for public review at the address listed above during regular business hours (7:30 a.m. to 4:30 p.m. Monday through Friday, except on Federal holidays). Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

II. Background

The BLM Colorado State Office has issued various statewide supplementary rules to protect natural resources and provide for public health and safety since 1990. Individual BLM field offices have also issued various supplementary rules for travel management, protection of natural resources, and public health and safety since 1995. Although these

supplementary rules have addressed a wide variety of natural resource and public health and safety concerns, evolving social trends and recreational uses of public land have necessitated additional statewide supplementary rules.

III. Discussion of the Proposed Supplementary Rules

These proposed supplementary rules would apply to all public lands and BLM facilities in Colorado. Proposed supplementary rule numbers 1-11 would address general public conduct on public lands and at BLM facilities. Many of these proposed supplementary rules were intentionally written using language found in Title 18 of the Colorado Revised Statutes.

Proposed supplementary rule numbers 12-16 would address resource damage and public safety concerns involving the use of exploding targets, flammable devices, and target shooting. The BLM consulted with the Shooting Sports Roundtable during the drafting of the proposed supplementary rules. The Shooting Sports Roundtable requested that the proposed rules be clear, specific, and enforceable, and asked the BLM to provide a comprehensive outreach effort prior to enforcement.

The BLM incorporated most of the recommendations from the Shooting Sports Roundtable into the proposed supplementary rules and is planning to issue press releases, post the new supplementary rules on the BLM State and Field Office websites, and will have BLM Law Enforcement Rangers conduct public education activities.

The BLM must consider risks to public safety and natural resources in light of increasing fire danger and development in the wildland urban interface. The USFS reported at least 16 wildfires were associated with exploding targets in 2013, causing millions of dollars in fire suppression costs and threatening the safety and well-being of surrounding

communities. The USFS subsequently issued an order banning exploding targets in forests and grasslands in Colorado, Wyoming, Kansas, Nebraska, and South Dakota in August 2013. Accordingly, the BLM believes that the proposed supplementary rules regarding exploding targets are warranted.

Proposed supplementary rule numbers 17-19 clarify existing Federal regulations found in 43 CFR 9264.1(h) relating to vehicles, game animals, boating, and outfitters. Proposed supplementary rule number 20 would address mechanized vehicle use within Wilderness Study Areas (WSA) off of a designated route. Until Congress makes a final determination on a WSA, the BLM manages these areas to preserve their suitability for designation as wilderness. Existing regulations in 43 CFR 8341.1 limit off-road vehicles to designated routes of travel, but this part does not apply to non-motorized vehicles.

Existing regulations in 43 CFR 6302.20(d) restrict the use of mechanical transport in a congressionally designated Wilderness Area, but do not apply to WSAs. Proposed supplementary rule number 20 affirms that the use of mechanical transport is generally prohibited in WSAs, consistent with Resource Management Plan decisions.

Proposed supplementary rule number 21 would address the burning of wood or wood pallets containing nails or staples on public land. Campsites in popular areas on public land are used repeatedly throughout the spring, summer, and fall. As use increases, the availability of firewood decreases, leading more campers to bring construction debris or wood pallets containing nails or staples to use as firewood. The nails and staples inadvertently end up in campfire ash left at the campsite. In an effort to return campsites to a more primitive condition, many campers scatter ashes and rock rings before leaving their campsite. The nails or staples end up on the ground surface, causing flat tires.

Proposed supplementary rule number 21 would reduce the risk of tire damage and personal injury from discarded nails and/or staples in popular camping areas.

The proposed supplementary rules are in conformance with the following Resource Management Plans (RMPs):

- Uncompahgre Basin RMP (1989);
- San Luis Resource Area RMP (1991);
- Gunnison RMP (1993);
- Royal Gorge RMP (1996);
- Colorado Canyons National Conservation Area and Black Ridge Canyons Wilderness RMP (2004);
- Little Snake RMP (2010);
- Canyons of the Ancients National Monument RMP (2010);
- Tres Rios RMP (2015);
- Colorado River Valley RMP (2015);
- Kremmling RMP (2015);
- White River RMP (2015); and
- Grand Junction RMP (2015).

IV. Procedural Matters

Executive Order 12866, Regulatory Planning and Review

These proposed supplementary rules are not a significant regulatory action and are not subject to review by the Office of Management and Budget under Executive Order 12866. They would not have an annual effect of \$100 million or more on the economy.

They would not adversely affect, in a material way, the economy; productivity;

competition; jobs; the environment; public health or safety; or State, local, or tribal governments or communities. They would not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency. They would not materially alter the budgetary effects of entitlements, grants, user fees, loan programs, or the rights or obligations of their recipients, nor would they raise novel legal or policy issues. The proposed supplementary rules would merely establish rules of conduct for public use of a limited area of public lands.

National Environmental Policy Act (NEPA)

The BLM has found that the proposed supplementary rules comprise a category or kind of action that has no significant individual or cumulative effect on the quality of the human environment. See 40 CFR 1508.4; 43 CFR 46.210. Specifically, the promulgation of the proposed supplementary rules is an action that is of an administrative, financial, legal, technical, or procedural nature within the meaning of 43 CFR 46.210(i). Therefore, the proposed action is categorically excluded from further documentation under NEPA in accordance with 43 CFR §§ 46.205(b) and 46.210(i). BLM has reviewed the proposed action and none of the extraordinary circumstances listed at 43 CFR 46.215 are applicable. The NEPA Categorical Exclusion (CX) documentation is on file at the Colorado State Office under NEPA No. DOI-BLM-CO-0000-2015-0002-CX.

Regulatory Flexibility Act

Congress enacted the Regulatory Flexibility Act of 1980 (RFA), as amended, 5 U.S.C. 601-612, to ensure that government regulations do not unnecessarily or disproportionately burden small entities. The RFA requires a regulatory flexibility

analysis if a rule would have a significant economic impact, either detrimental or beneficial, on a substantial number of small entities. These proposed supplementary rules would have no effect on business entities of any size. They would merely impose reasonable restrictions on certain recreational activities on certain public lands to protect natural resources and the environment and human health and safety. Therefore, the BLM has determined under the RFA that these supplementary rules would not have a significant economic impact on a substantial number of small entities.

Small Business Regulatory Enforcement Fairness Act

These proposed supplementary rules are not a “major rule” as defined under 5 U.S.C. 804(2). Proposed supplemental rule number 12 would restrict the possession, discharge, or use of exploding targets on public land in Colorado. Limiting the use of exploding targets on public land in Colorado would not have a significant effect on commercial sale of these targets.

Unfunded Mandates Reform Act

These proposed supplementary rules would not impose an unfunded mandate on State, local, or tribal governments of more than \$100 million per year; nor would they have a significant or unique effect on small governments or the private sector. The proposed supplementary rules would merely impose reasonable rules of conduct on public lands in Colorado to protect natural resources and public safety. Therefore, the BLM is not required to prepare a statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 et seq.).

Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights (Takings)

The proposed supplementary rules are not a government action capable of interfering with constitutionally protected property rights. The proposed supplementary rules would not address property rights in any form and would not cause the impairment of constitutionally protected property rights. Therefore, the BLM has determined that these proposed supplementary rules would not cause a “taking” of private property or require further discussion of takings implications under this Executive Order.

Executive Order 13132, Federalism

The proposed supplementary rules would not have a substantial direct effect on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 13132, the BLM has determined that these proposed supplementary rules would not have sufficient Federalism implications to warrant preparation of a Federalism Assessment.

Executive Order 12988, Civil Justice Reform

Under Executive Order 12988, the BLM has determined that these proposed supplementary rules would not unduly burden the judicial system and that they meet the requirements of sections 3(a) and 3(b)(2) of Executive Order 12988.

Executive Order 13175, Consultation and Coordination with Indian Tribal

Governments

In accordance with Executive Order 13175, the BLM has found that these proposed supplementary rules do not include policies that have tribal implications, and would have no bearing on trust lands or on lands for which title is held in fee status by Indian tribes or U.S. Government-owned lands managed by the Bureau of Indian Affairs.

Information Quality Act

In developing these proposed supplementary rules, the BLM did not conduct or use a study, experiment or survey requiring peer review under the Information Quality Act (Section 515 of Public Law 106-554).

Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

These proposed supplementary rules do not comprise a significant energy action. These proposed supplementary rules would not have an adverse effect on energy supply, production, or consumption, and have no connection with energy policy.

Executive Order 13352, Facilitation of Cooperative Conservation

In accordance with Executive Order 13352, the BLM has determined that the proposed supplementary rules would not impede facilitating cooperative conservation; would take appropriate account of and consider the interests of persons with ownership or other legally recognized interests in land or other natural resources; would properly accommodate local participation in the Federal decision-making process; and would provide that the programs, projects, and activities are consistent with protecting public health and safety.

Paperwork Reduction Act

These proposed supplementary rules do not contain information collection requirements that the Office of Management and Budget must approve under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 - 3521.

Author

The principal author of these proposed supplementary rules is John Bierk, State Chief Ranger, BLM Colorado State Office.

V. Proposed Rules

For the reasons stated in the preamble, and under the authority of 43 U.S.C. 315a, 1733(a), and 1740, and 43 CFR 8365.1-6, the State Director proposes supplementary rules for public lands and BLM facilities in Colorado, to read as follows:

SUPPLEMENTARY RULES FOR PUBLIC LANDS IN COLORADO

Definitions

Alcoholic beverage means a beverage as defined in 23 CFR 1270.3 (a).

BLM facility means any BLM office, storage yard, warehouse, or building owned or leased by the BLM directly or through the General Services Administration.

Camp means erecting a tent or shelter of natural or synthetic material; preparing a sleeping bag or other bedding material; parking a motor vehicle, motor home, or trailer; or mooring a vessel for the apparent purpose of overnight occupancy.

Demonstrations means public protests, assemblies, picketing, speechmaking, parades, marching, placement of signs or banners, holding vigils or religious services, and all other like forms of conduct that involve the communication or expression of views or grievances, engaged in by one or more persons, the conduct of which is reasonably likely to attract a crowd or onlookers. The term does not include casual use of public lands or BLM facilities in Colorado that is not reasonably likely to attract a crowd or onlookers.

Designated travel routes means roads and trails open to specified modes of travel and identified on a map of designated roads and trails that is maintained and available for public inspection at the BLM. Designated roads and trails are open to public use in

accordance with such limits and restrictions as are, or may be, specified in the Resource Management Plan (RMP) or travel management plan governing applicable public lands and BLM facilities in Colorado, or in future decisions implementing the RMP. This definition excludes any road or trail with BLM-authorized restrictions that prevent use of the road or trail. Restrictions may include signs or physical barriers such as gates, fences, posts, branches, or rocks.

Disorderly conduct means to intentionally, knowingly, or recklessly:

- (a) Make a coarse and obviously offensive utterance, gesture, or display in a public place when the utterance, gesture, or display tends to incite an immediate breach of the peace;
- (b) Make unreasonable noise in a public place or near a private residence that he or she has no right to occupy;
- (c) Fight with another in a public place except in an amateur or professional contest of athletic skill;
- (c) Discharge a firearm or other projectile shooting device in a public place except when engaged in lawful target practice or hunting; or
- (d) Display a deadly weapon, display any article used or fashioned in a manner to cause a person to reasonably believe that the article is a deadly weapon, or represent verbally or otherwise that he or she is armed with a deadly weapon in a public place in a manner calculated to alarm.

Existing travel routes means immediately recognizable motor vehicle travel routes or two-track trails that are not identified as closed to motorized vehicle use by a BLM sign or map.

Federal Officer means any delegated Federal law enforcement officer.

Firearm or Other Projectile Shooting Device means all firearms, air rifles, pellet and BB guns, spring guns, bows and arrows, slings, paint ball markers, other instruments that can propel a projectile (such as a bullet, dart, or pellet by combustion, air pressure, gas pressure, or other means), or any instrument that can be loaded with and fire blank cartridges.

Indecent exposure means to knowingly:

- (a) expose a person's genitals to the view of any person under circumstances in which such conduct is likely to cause affront or alarm to the other person with the intent to arouse or to satisfy the sexual desire of any person; or
- (b) perform an act of masturbation in a manner which exposes the act to the view of any person under circumstances in which such conduct is likely to cause affront or alarm to the other person.

Intimate parts mean the external genitalia or the perineum or the anus or the buttocks or the pubes or the breast of any person.

Mechanized vehicle means a human-powered mechanical device or contrivance for moving people or material in or over land, water, snow, or air that has moving parts, including, but not limited to, bicycles, game carriers, carts, and wagons, not powered by a motor. The term does not include wheelchairs, skis, or snowshoes.

Motorized vehicle means a vehicle that is propelled by a motor or engine, such as a car, truck, off-highway vehicle, motorcycle, or snowmobile.

Open alcoholic beverage container means a bottle, can, or other receptacle that contains any amount of alcoholic beverage and:

- (a) That is open or has a broken seal; or

(b) The contents of which are partially removed.

Passenger area means the area designed to seat the driver and passengers while a motor vehicle is in operation and any area that is readily accessible to the driver or a passenger while in his or her seating position, including, but not limited to, the glove compartment.

Public indecency means to perform any of the following acts in a public place or where the conduct may reasonably be expected to be viewed by members of the public:

- (a) An act of sexual intercourse;
- (b) A lewd exposure of an intimate part of the body, not including the genitals, done with intent to arouse or to satisfy the sexual desire of any person;
- (c) A lewd fondling or caress of the body of another person; or
- (d) A knowing exposure of the person's genitals to the view of a person under circumstances in which such conduct is likely to cause affront or alarm to the other person.

Public land means any land or interest in land owned by the United States and administered by the Secretary of the Interior through the BLM without regard to how the United States acquired ownership.

Public place means a place to which the public has access.

Riot means a public disturbance involving an assemblage of three or more persons which by tumultuous and violent conduct creates grave danger of damage or injury to property or persons or substantially obstructs the performance of any governmental function.

Wheelchair means a device designed solely for use by a mobility-impaired person for locomotion that is suitable for use in an indoor pedestrian area.

Prohibited Acts on Public Lands and BLM Facilities in Colorado

1. You must not engage in disorderly conduct.
2. You must not engage in actions or behaviors that are intended to prevent or disrupt any lawful BLM meeting, procession, or gathering; or significantly obstruct or interfere with said meeting, procession, or gathering by physical action, verbal utterance, or any other means.
3. You must not willfully deny any member of the public, public official, BLM employee, volunteer, invitee, or agent thereof, their lawful rights to gain access to, enter, use, or leave a BLM facility.
4. You must not willfully impede any public official, BLM employee, or volunteer in the lawful performance of duties or activities through the use of restraint, abduction, coercion, or intimidation, or by force and violence or threat thereof.
5. You must not willfully refuse or fail to leave a BLM facility upon being requested to do so by a Federal Officer, Field Office Manager, Acting Manager, or privately contracted security officer assigned to the facility if you have willfully committed, are committing, threaten to commit, or are inciting others to commit any act which did, or would, if completed, disrupt, impair, interfere with, or obstruct the lawful missions, processes, procedures, or functions being carried on in the BLM facility.
6. You must not willfully impede, disrupt, or hinder the normal proceedings of any BLM meeting or session conducted by any public official, BLM employee, volunteer, invitee, or agent thereof by any act of intrusion into the chamber or other areas designated for use of the body or official conducting the meeting or session or by any act designed to intimidate, coerce, or hinder any public official, BLM employee, volunteer, invitee, or agent thereof.

7. You must not conduct, participate in, or engage in demonstrations outside of designated demonstration areas when BLM has established such areas. BLM will establish designated demonstration areas only where it finds, in writing, that demonstrations would: (i) cause injury or damage to public lands or BLM facilities in Colorado; (ii) unreasonably impair the atmosphere of peace and tranquility maintained in wilderness, natural, or historic areas; (iii) unreasonably interfere with interpretive, visitor service, or other program activities, or with the administrative activities of BLM; (iv) substantially impair the operation of public use facilities or services; (v) present a clear and present danger to the public health and safety; or (vi) be incompatible with the nature and traditional use of the particular area of public land or BLM facility involved.
8. You must not remain or camp at any BLM facility past the normal business hours posted on the facility, unless otherwise authorized.
9. You must not incite or urge a group of five or more persons to engage in a current or impending riot or give commands, instructions, or signals to a group of five or more persons in furtherance of a riot.
10. You must not engage in a riot.
11. You must not engage in public indecency or indecent exposure.
12. You must not possess, discharge, or use explosives, incendiary or chemical devices, or exploding targets without prior authorization.
13. You must not engage in rifle or pistol target shooting activities unless they are conducted towards and into a backstop of material that prevents further travel beyond the intended target and/or ricochet of the bullet or projectile.

14. You must not rifle or pistol target shoot at materials other than paper, plastic, or steel targets manufactured for shooting sports or biodegradable clay pigeons.
15. You must not leave targets, target debris (except pieces of biodegradable clay pigeons), cartridge “brass,” or shell casings at any shooting area.
16. You must not possess, discharge, or use flammable devices including, but not limited to, gasoline bombs commonly referred to as “Sobe Bombs” or flammable projectiles discharged from a launching tube or other device.
17. You must not drink an alcoholic beverage or possess an open alcoholic beverage container while in the passenger area of a motorized vehicle.
18. You must not tow or be in possession of a trailer requiring registration under Colorado Revised Statutes that is either unregistered or has expired registration.
19. You must not violate any Colorado Revised Statute regarding hunting, fishing, boating, or outfitters.
20. You must not operate a mechanized vehicle within a designated Wilderness Study Area except on travel routes identified for such use by a BLM sign or map.
21. You must not burn wood or wood pallets containing nails or staples.

Exemptions

The following persons are exempt from these supplementary rules: any Federal, State, local, and/or military employees acting within the scope of their official duties; members of any organized rescue or fire fighting force performing an official duty; and persons who are expressly authorized or approved by the BLM.

Enforcement

Any person who violates any of these supplementary rules may be tried before a United States Magistrate and fined in accordance with 18 U.S.C. 3571, imprisoned for no more than 12 months under 43 U.S.C. 1733(a) and 43 CFR 8360.0-7, or both. In accordance with 43 CFR 8365.1-7, State or local officials may also impose penalties for violations of Colorado law.

Ruth Welch,

BLM Colorado State Director.

[FR Doc. 2016-21934 Filed: 10/4/2016 8:45 am; Publication Date: 10/5/2016]